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VIA ECFS
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Reply Comments of Oregon Association of Broadcasters
Canal Partners Media Petition. Docket No. 15-24

Dear Sir or Madam:

The copy of the Reply Comments of the Oregon Association of Broadcasters uploaded to ECFS in this proceeding yesterday, March 17, 2015 was inadvertently missing a page (Page 2). The copy of those Reply Comments attached to this letter includes that missing page but does not make any substantive changes to the Reply Comments.

Sincerely,

Jonathan R. Markman, Esq.
Counsel to Oregon Association of Broadcasters

I. INTRODUCTION

The Oregon Association of Broadcasters, a nonprofit trade association, and several of its member television stations,¹ submit these Reply comments in support of the position of the National Association of Broadcasters (“NAB”). NAB opposes the above-referenced Petition for Declaratory Ruling. At issue in the Petition from Canal Partners Media, LLC (“Canal”) is the practice by many broadcasters of selling “preemptible” time to both commercial and political advertisers. Under this practice, broadcasters sell spots at a lower rate on the condition that, if it turns out that there are more preemptible ads sold than there is time available, there is a chance that the spot may not run. When this happens, the question becomes how to determine which preemptible spots are to be, in fact, preempted. There are many ways of doing this, but the most common is Last-In, First-Out (“LIFO”). This means that, similar to a seniority system common in workplaces, the most recent preemptible ad buy is the first to go if there turns out not to be enough time available for all preemptible spots purchased.

Canal’s Petition asks the Commission to rule that political advertisers must be insulated from this preemption, moving them to the back of the preemption line the minute they purchase time. This creates, as the NAB called it, a “Last-In, Never-Out” system for political advertisers. It effectively requires broadcasters to sell political advertisers non-preemptible spots at lower, preemptible, prices, and increases the likelihood that a commercial advertiser will be preempted, even if it was not the “Last-In.”

At the core of the Commission’s political advertising rules is the goal of ensuring that political advertisers are on an equal footing with commercial advertisers. Canal’s petition seeks

¹ The member television stations joining in these comments are: KGW, Portland, OR; KPDX, Vancouver, WA; KPTV, Portland, OR; KOTI, Klamath Falls, OR; KOB, Medford, OR; KEVU-CD, Eugene, OR; KLSR-TV, Eugene, OR; KFXO-LD, Bend, OR; KTVZ, Bend, OR; and KTVL, Medford, OR.

to exempt political advertisers from so-called “LIFO” systems, thereby eliminating the equality at the heart of this policy and instead placing political advertisers in a *superior* position to commercial advertisers, protecting them from preemption even when they elect to pay for less expensive preemptible spots. Not only is the proposed rule contrary to Congressional intent and Commission precedent, it is unnecessary, illogical, and unfair to commercial advertisers, broadcasters, and political advertisers alike. The Oregon Association of Broadcasters and those of its member stations joining in these comments support the NAB in its opposition to the declaratory ruling sought by Canal Partners Media.

II. DISCUSSION

A. Canal’s Petition is Contrary To Congressional Intent and Commission Precedent.

In its Opposition to Canal’s Petition, the NAB lays out in great detail why Canal’s proposal is contrary to Congressional intent and to established Commission policy.² When Congress enacted the current “lowest unit charge” rules 1971, its goal was to place political advertisers “on par” with commercial advertisers.³ It wanted to avoid the prospect of candidates being kept off the public airwaves, which would be contrary to the public interest mission of broadcast licenses. It sought the creation of a quasi-“Most Favored Nation” status⁴ in political advertising sales, ensuring that political advertisers were able to negotiate on equal terms as well-established commercial advertisers. But neither Congress nor the Commission intended for

² Opposition of the National Association of Broadcasters, MB Docket No. 15-24 (March 2, 2015) (“NAB Opposition”), pp. 5-8.

³ *Id.*

⁴ A “Most Favored Nation” provision in a contract or treaty requires the parties to give one another the benefit of any better term included in an agreement with another party.

political advertisers to receive *more* favorable treatment than commercial advertisers. In fact, the legislative history of that Act and subsequent Congressional actions on the subject indicate that they explicitly did *not* want to protect political advertisers from having their spots preempted should they choose to purchase preemptible time, so long as they were given the same terms as others in that class.⁵

The Petition's aim is also contrary to established Commission policy, which has consistently followed Congressional intent, limiting its involvement in broadcaster-candidate negotiations to ensuring that pricing and availability follow the equal time, lowest-unit-cost, and reserved time rules. In fact, as the NAB makes clear in its Opposition, the Commission has on numerous occasions recognized that stations have a variety of pricing structures which suit their specific markets and advertising customers, declining to intervene in order to gain more favorable treatment for political advertisers in these negotiations.⁶ Instead, it made clear that it sought only to ensure that political advertisers receive the same treatment as other advertisers *within the class of spot they purchase*.⁷

During both the original enactment of the political advertising principles and the Commission's creation of the rules, preemptive pricing was a well-known practice, and was mentioned numerous times in both proceedings.⁸ It is clear that both Congress and the Commission intended political advertisers to be subject to the same preemption rules as commercial advertisers. The Commission was correct then in deciding not to give political advertisers the unfair leg-up which Congress did not intend for them to have. It should not

⁵ *Id.* at p.6 & n.11.

⁶ *Id.* at p. 5-8, 11-12.

⁷ *Codification of the Commission's Political Programming Policies*, 7 FCC Rcd. 4611, 4615 (1992).

⁸ *Id.*

change course now. It cannot go against Congressional intent,⁹ and it may not reverse its own rulings in this proceeding.¹⁰

B. Canal's Proposal Would Undermine the Preemptible Spot System and Creates an Unfair and Illogical System in its Place.

In addition to being contrary to Congressional intent and Commission precedent, Canal's proposal risks undermining the entire concept of preemptible time, thereby creating worse outcomes for political and commercial advertisers alike. A "preemptible spot" system is built on a simple business arrangement: the broadcaster gives the advertiser a lower rate in exchange for the flexibility of being able to not air the spot in the event that there is not enough time for all preemptible spots that have been purchased to air. In order for such a system to be viable, advertisers must have trust in the mechanism by which the broadcaster decides who, among the preemptible spot-buying advertisers, gets preempted.

While there are many systems for doing so, including "mini-auctions," most broadcasters prefer the LIFO model because it is the simplest and most predictable. Advertisers also benefit, because they can more easily predict whether they will be preempted based on how far in advance they buy their spots.

Canal's proposal would completely upset this system by exempting candidate ads from preemption by commercial advertisers, regardless of the order in which the spots were purchased. This means that a commercial advertiser has no way of knowing whether they might be preempted, even if they buy well in advance, without knowing how many political advertisers

⁹ *Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044, 1047 (D.C. Cir. 1997).

¹⁰ 47 C.F.R. § 1.2 allows the Commission to issue a declaratory ruling as a means of "terminating controversy or removing uncertainty." Given the clear statements of both Congressional intent and Commission precedent, there is no 'controversy' or 'uncertainty', meaning that a declaratory ruling in favor of Canal is contrary to Commission Rules.

might come along after them. This will reduce their willingness to buy preemptible spots. It also means that political advertisers will have no interest in paying for more expensive, non-preemptible spots, leading to a loss of revenue such that broadcasters may choose not to offer preemptible spots at all, harming everyone involved.

This proposal will also potentially create more, and more complex, issues than those Canal imagines. As NAB points out, Canal's proposal does not deal with what happens in the event that there are more preemptible political spots purchased than there are preemptible spots available, an occurrence which is certainly possible during the busy electoral season, especially if, as discussed above, political advertisers flock to the preemptible class. Canal's proposal would require broadcasters to prioritize political spots over commercial ones within the preemptible class, but how does a LIFO broadcaster decide which political spots to preempt if only political spots remain? Does it return to the LIFO system, meaning that candidates who believed they couldn't be preempted in fact are? Does the station conduct a mini-auction, something it may not have the resources or expertise to perform? Perhaps political advertisers will next demand that the FCC require their preemptible spots to take precedence over even *non-preemptible* commercial advertising. No matter how this circumstance is dealt with, the fact is that Canal's proposal creates greater uncertainty and unfairness than does the current LIFO system.

C. This Petition 'Solves' a Problem Which Does Not Exist.

The LIFO system works. It allows broadcasters to sell airtime while retaining the flexibility of preempting spots where it becomes necessary, whether for other spots, its own programming, or public interest announcements. It allows advertisers, both commercial and political, to buy airtime at a discounted rate if they don't need an assurance that the spot will air

at a given time. And since the Commission already requires broadcasters to inform political advertisers of “all pertinent information about the privileges associated with [different] classes” of spot,¹¹ there is no risk of political advertisers being unaware of the risk of preemption, or the means by which they can avoid it. If advertisers, either commercial or political, do not want to risk their spot being preempted, there is a simple fix: buy non-preemptible airtime.

Despite a baseless claim that political advertisers are uniquely susceptible to being preempted because of the unique characteristics of political campaigns,¹² a claim thoroughly debunked by the NAB Opposition,¹³ the only real issue facing a political advertiser who wishes to avoid preemption is the higher cost of a non-preemptible ad spot. Ultimately, the goal of Canal’s petition is to save political advertisers (of which it is one) money. Canal wants it and its fellow political ad buyers to be able to have their cake and eat it too. They want the discounted rate that comes with a preemptible spot, but they don’t want the spot to be preemptible. This Petition seeks to break a voluntary, functioning system in order to achieve a favorable economic result for one party in a business transaction. That is emphatically not what FCC regulations are for, and the Commission should reject Canal’s attempt to make them do so.

CONCLUSION

Canal’s proposal, styled as a request for clarification of Commission rules, is in fact a radical departure from Congressional intent and Commission precedent which would undermine an established system in order to benefit itself and its clients. The practice at issue here, the use of LIFO to determine the order of preemption for advertisements sold as preemptible, is

¹¹ *Political Programming Policies*, 7 FCC Rcd. at 4620.

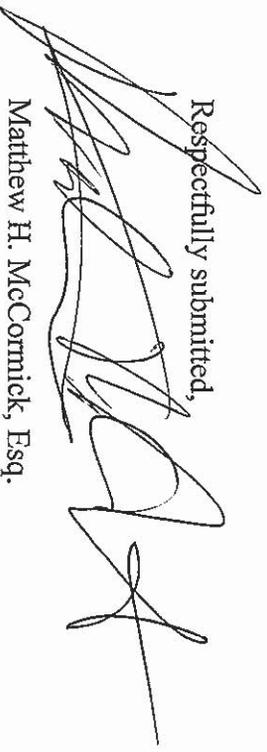
¹² Petition for Declaratory Ruling, Canal Partners Media, LLC, MB Docket No. 15-24 (September 29, 2014), at p. 6.

¹³ NAB Opposition at pp. 15-16.

longstanding, efficient, lawful, and fair. All parties, broadcasters, political advertisers, and commercial advertisers, know what they are getting and they get what they pay for. The system is fully compliant with existing Commission rules, which are themselves in line with clear Congressional intent, and there is no controversy or uncertainty to resolve. Political advertisers are on the same footing, and subject to the same rules, as commercial advertisers.

Canal and its clients, rather than being disadvantaged by the current rule, seek to have the Commission disadvantage broadcasters and commercial advertisers so that they might save some money. This was not Congress's intent when it set out the political advertising principles, it was not the Commission's intent when it crafted and reconsidered its political advertising rules, and it is not the purpose of regulatory agencies like the FCC. The Oregon Association of Broadcasters and those member stations signing on to these Reply Comments join with the NAB in urging the Commission to serve the public interest by denying Canal's Petition.

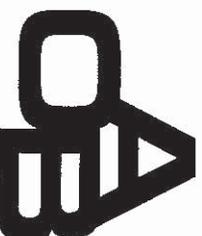
Respectfully submitted,



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March 17, 2015



**Oregon Association
of Broadcasters**

Station KGW, Portland, OR

DJ Wilson



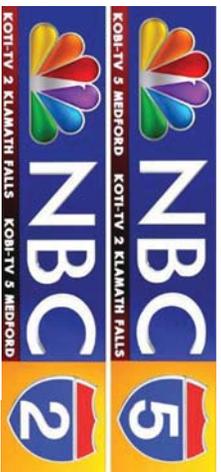
Stations KOB1, Medford, OR,
KLSR-TV, Eugene, OR,
KEVU-CD, Eugene, OR, and
KOTI, Klamath Falls, OR

Stations KTVZ, Bend, OR, and
KFXO-LD, Bend, OR

Bob Singer



Patricia C. (Patsy) Smultin



FOX Oregon's
KLSR-TV 34.1
EUGENE



Stations KPDX, Vancouver, WA, and
KPTV, Portland, OR

Joshua Pila



Station KTVL, Medford, OR

Kingsley Kelley / General Manager / KTVL News10 & CW11

